

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BROADCAST MUSIC, INC.; HOUSE
OF CASH, INC.; PAUL SIMON MUSIC;
SHIRLEY EIKHARD USA MUSIC; EMI
BLACKWOOD MUSIC INC.;
COUNTING CROWS, LLC d/b/a
JONES FALLS MUSIC; SONGS OF
UNIVERSAL, INC.; UNIVERSAL
MUSIC-Z TUNES, LLC d/b/a
UNIVERSAL MUSIC Z SONGS;
SHROOM SHADY MUSIC; HOTEL
BRAVO MUSIC; M SHOP
PUBLISHING, A DIVISION OF
MACHINE SHOP PUBLISHING, LLC;
MCMOORE MCLESST PUBLISHING,

Plaintiffs,

v.

DWB CORPORATION d/b/a
ROONEY'S; DEAN DAVIS,
CHRISTOPHER NARA and LEAH
BOERSEMA, each individually,

Defendants.

No.

COMPLAINT

1 Plaintiffs, by their attorneys, for their Complaint against Defendants, allege as
2 follows (on knowledge as to Plaintiffs; otherwise on information and belief):

3 **JURISDICTION AND VENUE**

4 1. This is a suit for copyright infringement under the United States Copyright
5 Act of 1976, as amended, 17 U.S.C. §§101 *et seq.* (the "Copyright Act"). This Court has
6 jurisdiction pursuant to 28 U.S.C. § 1338(a).

7 2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1400(a).

8 **THE PARTIES**

9 3. Plaintiff Broadcast Music, Inc. ("BMI") is a corporation organized and existing
10 under the laws of the State of New York. BMI's principal place of business is 7 World
11 Trade Center, 250 Greenwich Street, New York, New York 10007. BMI has been granted
12 the right to license the public performance rights in approximately 7.5 million copyrighted
13 musical compositions (the "BMI Repertoire"), including those which are alleged herein to
14 have been infringed.

15 4. The Plaintiffs, other than BMI, are the owners of the copyrights in the
16 musical compositions, which are the subject of this lawsuit. All Plaintiffs are joined
17 pursuant to Fed.R.Civ.P. 17(a) and 19(a).

18 5. Plaintiff House of Cash, Inc. is a corporation. This Plaintiff is the copyright
19 owner of at least one of the songs in this matter.

20 6. Plaintiff Paul Simon Music is a sole proprietorship owned by Paul Simon.
21 This Plaintiff is the copyright owner of at least one of the songs in this matter.

22 7. Plaintiff Shirley Eikhard USA Music is a sole proprietorship owned by Shirley
23 Eikhard. This Plaintiff is the copyright owner of at least one of the songs in this matter.

24 8. Plaintiff EMI Blackwood Music Inc. is a corporation. This Plaintiff is the
25 copyright owner of at least one of the songs in this matter.

26 9. Plaintiff Counting Crows, LLC is a limited liability company d/b/a Jones Falls

1 Music. This Plaintiff is the copyright owner of at least one of the songs in this matter.

2 10. Plaintiff Songs of Universal, Inc. is a corporation. This Plaintiff is the
3 copyright owner of at least one of the songs in this matter.

4 11. Plaintiff Universal Music-Z Tunes, LLC is a limited liability company d/b/a
5 Universal Music-Z Songs. This Plaintiff is the copyright owner of at least one of the songs
6 in this matter.

7 12. Plaintiff Shroom Shady Music is a sole proprietorship owned by Marshall B.
8 Mathers III. This Plaintiff is the copyright owner of at least one of the songs in this matter.

9 13. Plaintiff Hotel Bravo Music is a sole proprietorship owned by Holly B.
10 Hafermann. This Plaintiff is the copyright owner of at least one of the songs in this matter.

11 14. Plaintiff M Shop Publishing, a division of Machine Shop Publishing, LLC is a
12 limited liability company. This Plaintiff is the copyright owner of at least one of the songs in
13 this matter.

14 15. Plaintiff McMoore McLesst Publishing is a partnership owned by Daniel
15 Quine Auerbach and Patrick James Carney. This Plaintiff is the copyright owner of at least
16 one of the songs in this matter.

17 16. Defendant DWB Corporation is a corporation organized and existing under
18 the laws of the state of Washington, which operates, maintains and controls an
19 establishment known as Rooney's, located at 17626 140th Avenue Northeast, Woodinville,
20 Washington 98072, in this district (the "Establishment").

21 17. In connection with the operation of the Establishment, Defendant DWB
22 Corporation publicly performs musical compositions and/or causes musical compositions
23 to be publicly performed.

24 18. Defendant DWB Corporation has a direct financial interest in the
25 Establishment.

26 19. Defendant Dean Davis is an officer of Defendant DWB Corporation with

1 primary responsibility for the operation and management of that corporation and the
2 Establishment.

3 20. Defendant Dean Davis has the right and ability to supervise the activities of
4 Defendant DWB Corporation and a direct financial interest in that corporation and the
5 Establishment.

6 21. Defendant Christopher Nara is an officer of Defendant DWB Corporation
7 with primary responsibility for the operation and management of that corporation and the
8 Establishment.

9 22. Defendant Christopher Nara has the right and ability to supervise the
10 activities of Defendant DWB Corporation and a direct financial interest in that corporation
11 and the Establishment.

12 23. Defendant Leah Boersema is an officer of Defendant DWB Corporation with
13 primary responsibility for the operation and management of that corporation and the
14 Establishment.

15 24. Defendant Leah Boersema has the right and ability to supervise the
16 activities of Defendant DWB Corporation and a direct financial interest in that corporation
17 and the Establishment

18 **CLAIMS OF COPYRIGHT INFRINGEMENT**

19 25. Plaintiffs repeat and reallege each of the allegations contained in paragraphs
20 1 through 24.

21 26. Plaintiffs allege six (6) claims of willful copyright infringement, based upon
22 Defendants' unauthorized public performance of musical compositions from the BMI
23 Repertoire. All of the claims for copyright infringement joined in this Complaint are
24 governed by the same legal rules and involve similar facts. Joinder of these claims will
25 promote the convenient administration of justice and will avoid a multiplicity of separate,
26 similar actions against Defendants.

27. Annexed to this Complaint as a schedule (the "Schedule") and incorporated herein is a list identifying some of the many musical compositions whose copyrights were infringed by Defendants. The Schedule contains information on the six (6) claims of copyright infringement at issue in this action. Each numbered claim has the following eight lines of information (all references to "Lines" are lines on the Schedule): Line 1 providing the claim number; Line 2 listing the title of the musical composition related to that claim; Line 3 identifying the writer(s) of the musical composition; Line 4 identifying the publisher(s) of the musical composition and the plaintiff(s) in this action pursuing the claim at issue; Line 5 providing the date on which the copyright registration was issued for the musical composition; Line 6 indicating the copyright registration number(s) for the musical composition; Line 7 showing the date(s) of infringement; and Line 8 identifying the Establishment where the infringement occurred.

28. For each musical composition identified on the Schedule, the person(s) named on Line 3 was the creator of that musical composition.

29. For each work identified on the Schedule, on or about the date(s) indicated on Line 5, the publisher(s) named on Line 4 (including any predecessors in interest), complied in all respects with the requirements of the Copyright Act and received from the Register of Copyrights Certificates of Registration bearing the number(s) listed on Line 6.

30. For each work identified on the Schedule, on the date(s) listed on Line 7, Plaintiff BMI was (and still is) the licensor of the public performance rights in the musical composition identified on Line 2. For each work identified on the Schedule, on the date(s) listed on Line 7, the Plaintiff(s) listed on Line 4 was (and still is) the owner of the copyright in the respective musical composition listed on Line 2.

31. For each work identified on the Schedule, on the date(s) listed on Line 7, Defendants publicly performed and/or caused to be publicly performed at the Establishment the musical composition identified on Line 2 without a license or permission

1 to do so. Thus, Defendants have committed copyright infringement.

2 32. The specific acts of copyright infringement alleged in the Complaint, as well
3 as Defendants' entire course of conduct, have caused and are causing Plaintiffs great and
4 incalculable damage. By continuing to provide unauthorized public performances of works
5 in the BMI Repertoire at the Establishment, Defendants threaten to continue committing
6 copyright infringement. Unless this Court restrains Defendants from committing further
7 acts of copyright infringement, Plaintiffs will suffer irreparable injury for which they have no
8 adequate remedy at law.

9 WHEREFORE, Plaintiffs pray that:

10 (I) Defendants, their agents, servants, employees, and all persons acting under
11 their permission and authority, be enjoined and restrained from infringing, in any manner,
12 the copyrighted musical compositions licensed by BMI, pursuant to 17 U.S.C. § 502;

13 (II) Defendants be ordered to pay statutory damages, pursuant to 17 U.S.C. §
14 504(c);

15 (III) Defendants be ordered to pay costs, including a reasonable attorney's fee,
16 pursuant to 17 U.S.C. § 505; and

17 (IV) Plaintiffs have such other and further relief as is just and equitable.

18 DATED this 15th day of April, 2013.

19 RIDDELL WILLIAMS P.S.

20 By: /s/ Jayson W. Sowers
21 Jayson W. Sowers, WSBA #27618

22
23 By: /s/ Bryan J. Case
24 Bryan J. Case, WSBA #41781
25 Attorneys for Plaintiffs
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Schedule

| | | |
|--------|-------------------------|---|
| Line 1 | Claim No. | 1 |
| Line 2 | Musical Composition | Folsom Prison a/k/a Folsom Prison Blues |
| Line 3 | Writer(s) | John R. Cash a/k/a Johnny Cash |
| Line 4 | Publisher Plaintiff(s) | House of Cash, Inc. |
| Line 5 | Date(s) of Registration | 2/13/84 1/13/83 9/14/56 EU 418371 |
| Line 6 | Registration No(s). | RE 196-295 RE 153-380 Ep 102326 11/30/55 |
| Line 7 | Date(s) of Infringement | 01/17/2013 |
| Line 8 | Place of Infringement | Rooney's |

| | | |
|--------|-------------------------|--|
| Line 1 | Claim No. | 2 |
| Line 2 | Musical Composition | Me And Julio Down By The Schoolyard |
| Line 3 | Writer(s) | Paul Simon |
| Line 4 | Publisher Plaintiff(s) | Paul Simon, an individual d/b/a Paul Simon Music |
| Line 5 | Date(s) of Registration | 11/15/71 |
| Line 6 | Registration No(s). | Eu 292677 |
| Line 7 | Date(s) of Infringement | 01/17/2013 |
| Line 8 | Place of Infringement | Rooney's |

| | | |
|--------|-------------------------|---|
| Line 1 | Claim No. | 3 |
| Line 2 | Musical Composition | Something To Talk About AKA Let's Give Them Something To Talk About |
| Line 3 | Writer(s) | Shirley Eikhard |
| Line 4 | Publisher Plaintiff(s) | Shirley Rose Eikhard, an individual d/b/a Shirley Eikhard USA Music; EMI Blackwood Music Inc. |
| Line 5 | Date(s) of Registration | 3/17/88 |
| Line 6 | Registration No(s). | PAu 1-069-584 |
| Line 7 | Date(s) of Infringement | 01/16/2013 |
| Line 8 | Place of Infringement | Rooney's |

| | | |
|--------|-------------------------|--|
| Line 1 | Claim No. | 4 |
| Line 2 | Musical Composition | Long December |
| Line 3 | Writer(s) | Adam F. Duritz |
| Line 4 | Publisher Plaintiff(s) | EMI Blackwood Music, Inc.; Counting Crows, LLC d/b/a Jones Falls Music |
| Line 5 | Date(s) of Registration | 11/25/96 11/24/97 |
| Line 6 | Registration No(s). | PA 818-682 PA 880-969 |
| Line 7 | Date(s) of Infringement | 01/16/2013 |
| Line 8 | Place of Infringement | Rooney's |

| | | |
|--------|-------------------------|---|
| Line 1 | Claim No. | 5 |
| Line 2 | Musical Composition | Love The Way You Lie |
| Line 3 | Writer(s) | Marshall B. Mathers III; Alexander Grant; Holly Hafermann |
| Line 4 | Publisher Plaintiff(s) | Songs of Universal, Inc.; Universal Music-Z Tunes, LLC d/b/a Universal Music Z Songs; Marshall B. Mathers III, an individual d/b/a Shroom Shady Music; Holly B. Hafermann, an individual d/b/a Hotel Bravo Music; M Shop Publishing, A Division of Machine Shop Publishing, LLC |
| Line 5 | Date(s) of Registration | 3/9/11 |
| Line 6 | Registration No(s). | PA 1-730-976 |
| Line 7 | Date(s) of Infringement | 01/16/2013 |
| Line 8 | Place of Infringement | Rooney's |

| | | |
|--------|-------------------------|---|
| Line 1 | Claim No. | 6 |
| Line 2 | Musical Composition | Howlin' For You |
| Line 3 | Writer(s) | Dan Auerbach; Patrick Carney |
| Line 4 | Publisher Plaintiff(s) | Daniel Quine Auerbach and Patrick James Carney, a partnership d/b/a McMoore McLesl Publishing |
| Line 5 | Date(s) of Registration | 6/1/10 |
| Line 6 | Registration No(s). | PA 1-698-031 |
| Line 7 | Date(s) of Infringement | 01/16/2013 |
| Line 8 | Place of Infringement | Rooney's |
